
HOUSE BILL No. 1117

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2-83.

Synopsis: IURC jurisdiction over utility mergers. Provides that the utility regulatory commission (IURC) has jurisdiction over mergers of public utilities, utility companies, and holding companies of public utilities and utility companies. Requires the commission to issue an order not later than 180 days after a petition for approval of a merger is filed.

Effective: July 1, 2002.

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January 8, 2002, read first time and referred to Committee on Commerce, Economic Development and Technology.

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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1117

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-83 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2002]: Sec. 83. (a) ~~No~~ **This section does not**
3 **apply to the following:**

4 (1) **A corporation organized or operating under IC 8-1-13.**

5 (2) **A corporation that:**

6 (A) **is organized under IC 23-17; and**

7 (B) **has members that are local district corporations (as**
8 **defined in IC 8-1-13-23).**

9 (b) **As used in this section, "control" means the power to direct**
10 **the management and policies of a public utility, utility company, or**
11 **holding company through:**

12 (1) **ownership of voting securities or stock;**

13 (2) **the terms of a contract; or**

14 (3) **other means.**

15 **The term does not include power to direct management and**
16 **policies derived from holding an official position or corporate**
17 **office with the public utility, utility company, or holding company.**

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A person that owns, controls, or has the power to vote or the power to vote proxies that constitute at least twenty percent (20%) of the total vote power of a public utility, utility company, or holding company is presumed to have control of the public utility, utility company, or holding company.

(c) As used in this section, "holding company" means a company that has control over at least one (1) of the following:

- (1) A public utility (as defined in section 1 of this chapter).
- (2) A utility company.

(d) As used in this section, "person" means:

- (1) an individual;
- (2) a firm;
- (3) a corporation;
- (4) a company;
- (5) a partnership;
- (6) a limited liability company;
- (7) an association;
- (8) a trustee;
- (9) a lessee; or
- (10) a receiver.

(e) As used in this section, "reorganization" means a transaction that results in:

- (1) a change in the ownership of a majority of the voting capital stock of a public utility;
- (2) a change in the ownership or control of an entity that owns or controls a majority of the voting capital stock of a public utility;
- (3) the merger of two (2) or more public utilities; or
- (4) the acquisition by a public utility of substantially all the assets of another public utility.

(f) As used in this section, "utility company" means every corporation, company, partnership, limited liability company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment for the:

- (1) conveyance of telegraph or telephone messages;
- (2) production, transmission, delivery, or furnishing of heat, light, water, or power; or
- (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that acquires, owns, or

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operates any of the foregoing facilities.

(g) A public utility, as defined in section 1 of this chapter, ~~shall~~ **may not do any of the following without approval of the commission after hearing:**

(1) Sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation. ~~or~~

(2) Contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation. ~~without the approval of the commission after hearing.~~

~~And no such~~

(3) ~~Contract for or effect a reorganization of the public utility.~~

(4) **Acquire control of a public utility, utility company, or holding company.**

(h) **A person may not acquire control of a public utility or a holding company of a public utility without approval of the commission after a hearing.**

(i) **A holding company that controls one (1) or more public utilities may not acquire control of a utility company without approval of the commission after a hearing.**

(j) **A public utility, except temporarily or in case of emergency and for a period of not exceeding thirty (30) days, shall may not make any special contract at rates other than those prescribed in its schedule of rates theretofore filed with the commission, and in force, with any other utility for rendering any service to or procuring any service from such other utility, without the approval of the commission. It shall be lawful, however, for any utility to make a contract for service to or from another utility at rates previously filed with and approved by the commission and in force.**

~~(b)~~ (k) **The approval of the commission of the sale, assignment, transfer, lease, or encumbrance of a franchise or any part thereof under this section shall not revive or validate any lapsed or invalid franchise, or enlarge or add to the powers and privileges contained in the grant of any franchise or waive any forfeiture. No such public utility shall directly or indirectly purchase, acquire, or become the owner of any of the property, stock, or bonds of any other public utility authorized to engage or engaged in the same or a similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit unless authorized so to do by the commission.**

(l) **The commission shall issue an order not later than one hundred eighty (180) days after a petition seeking approval is filed**



1 **under this section. If the commission fails to issue an order within**
2 **one hundred eighty (180) days after the petition is filed, the petition**
3 **is considered approved.**

4 ~~(c)~~ **(m)** Nothing contained in this section shall prevent the holding
5 of stock lawfully acquired before May 1, 1913, or prohibit, upon the
6 surrender or exchange of said stock pursuant to a reorganization plan,
7 the purchase, acquisition, taking, or holding by the owner of a
8 proportionate amount of the stock of any new corporation organized to
9 take over at foreclosure or other sale, the property of the corporation
10 whose stock has been thus surrendered or exchanged.

11 ~~(d)~~ **(n)** Every contract by any public utility for the purchase,
12 acquisition, assignment, or transfer to it of any of the stock of any other
13 public utility by or through any person, partnership, limited liability
14 company, or corporation without the approval of the commission shall
15 be void and of no effect, and no such transfer or assignment of such
16 stock upon the books of the corporation pursuant to any such contract
17 shall be effective for any purpose.

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